IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 20TH MARCH 2007 / 29TH PHALGUNA 1928

MFA.No. 526 of 2002()

OPMV.880/1993 of MOTOR ACCIDENT CLAIMS TRIBUNAL, IRINJALAKUDA
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APPELLANT: PETITIONER

DR.K.J.JOSE S/O.JOSEPH,RESIDING AT KALLUKKARAN HOUSE,P.O.OLLUR,THRISSUR DISTRICT. (DIED, LR'S IMPLEADED)

SUPPLEMENTAL APPELLANTS:

SUPPL.2: RANI JOSE, WIDOW OF DR.K.J.JOSE.

SUPPL.3: JEENA JOSE, D/O LATE. DR.K.J.JOSE.

SUPPL.4: INDU SANU, D/O LATE DR.K.J.JOSE

ALL ARE RESIDING AT KALLUKKARAN HOUSE, OLLUR, THRISSUR DISTRICT.

(LEGAL HEIRS OF THE DECEASED APPELANT ARE IMPLEADED AS SUPPLEMENTAL APPELLANTS 2 TO 4 VIDE ORDER DATED 8/3/07 IN I.A.400/07)

BY ADV. SRI.V.CHITAMBARESH
SRI.T.C.SURESH MENON
SRI.KRISHNA PRASAD. S
SRI.SHAMIER MARICKAR
SMT.M.R. VALSA

RESPONDENTS: RESPONDENTS
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1. ASHRAFF,S/O.MOHAMMED,RESIDING AT CHERUNGATTIL HOUSE,NEAR KUNNATHPALAM, OLAVANNA,KOZHIKKODE.

2. THE NATIONAL INSURANCE COMPANY LIMITED, KOZHIKODE.

BY ADV. SRI.V.G.ARUN FOR R1

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 20/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.RAMAN & ANTONY DOMINIC, JJ.
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M.F.A NO. 526 OF 2002
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Dated this the 20th day of March, 2007

J U D G M E N T

Antony Dominic, J.

The legal representatives of the claimant in OP(M.V) No.880/93 are the appellants. The late Dr.K.J.Jose suffered injuries on 24/10/92, when he was driving a car bearing No.KLR 6005 along with his family members. It is stated that when he was driving the said vehicle, a tempo van bearing No.KRU 2457 driven by the first respondent came in a rash and negligent manner and hit against the car in which the claimant and his family members were travelling. By the impact of the accident, the claimant suffered serious injuries, which are mentioned in Para 18 of the award. The claim petition was filed for a compensation of Rs.6,41,000/- and by the impugned award the Tribunal awarded a total compensation of Rs.77,365. During the pendency of the appeal, the claimant expired and thereafter, his legal representatives came on record.

2. It is seen that through PW2, the disability certificate certifying permanent disability of 45% issued by a Medical Board

was proved. But, however the Tribunal accepted only 20% disability and as against claim of Rs.1,50,000/-, awarded compensation of Rs.24,000/- only .

3. The submission of the counsel for the appellant is that the Tribunal is erred in reducing the claim amount fixing 20% alone as disability. We note that as a result of the injuries sustained by the late claimant, there was a reduction in the length of his right leg by 2.5 cms. Going through the evidence, we are not in a position to accept the claim of the appellant that there was any reduction in his earning capacity. Resultantly, we are not in a position to accept the disability as certified and award compensation for 45% disability taking the monthly income of the deceased as certified in Ext.A5 salary slip.

4. Taking into account the over all circumstances of the case, the injuries sustained and the fact that the accident had not affected his earning capacity, we are inclined to accept a global sum and award a total compensation of Rs.1,50,000/- in satisfaction of the claim of the claimant. Accordingly, as against Rs.24,000/- awarded towards the permanent disability suffered by the claimant, we award Rs.1,50,000/-. The additional

compensation of Rs.1,26,000/- awarded herein will also carry interest at the rate of 7% from the date of presentation of the petition till date of realisation. Therefore, counsel for the appellants argued that compensation awards towards other item of claims is also inadequate. We have gone through the award and are satisfied that reasonable compensation has been awarded on all such claims. In all other respects, the award will stand confirmed.

The appeal stands disposed of as above.

P.R.RAMAN, JUDGE.

ANTONY DOMINIC, JUDGE.

Rp